

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #16	CCRB Case #: 202100859	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 01/29/2021 9:16 PM	Location of Incident: Park Avenue and Bedford Avenue, 79th Precinct Stationhouse	18 Mo. SOL 7/29/2022	Precinct: 79		
Date/Time CV Reported Sun, 01/31/2021 4:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/08/2021 10:57 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Ronald Chiriboga	13300	955814	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Neysa Korycki	04271	960606	079 PCT
2. POM Moses Lebron	09546	956831	079 PCT
3. POM Dominique Garrett	06374	958615	079 PCT
4. POM Troy Driscoll	03867	966548	079 PCT
5. POM Benjamin Rodriguez	10403	965843	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Ronald Chiriboga	Abuse: At Park Avenue and Bedford Avenue in Brooklyn, Police Officer Ronald Chiriboga stopped the vehicle in which § 87(2)(b) was an occupant.	
B . POM Ronald Chiriboga	Abuse: At Park Avenue and Bedford Avenue in Brooklyn, Police Officer Ronald Chiriboga frisked § 87(2)(b)	
C . POM Ronald Chiriboga	Abuse: At Park Avenue and Bedford Avenue in Brooklyn, Police Officer Ronald Chiriboga searched § 87(2)(b)	
D . POM Ronald Chiriboga	Abuse: At Park Avenue and Bedford Avenue in Brooklyn, Police Officer Ronald Chiriboga seized § 87(2)(b) property.	
E . POM Ronald Chiriboga	Abuse: At the 79th Precinct Stationhouse in Brooklyn, Police Officer Ronald Chiriboga strip-searched § 87(2)(b)	
F . POM Ronald Chiriboga	Abuse: At the 79th Precinct Stationhouse in Brooklyn, Police Officer Ronald Chiriboga searched the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

On February 8, 2021, the CCRB received the following case from IAB via original log number 21-2548, filed by § 87(2)(b).

On January 29, 2021, at approximately 8:43 PM, at Park Avenue in Bedford Avenue in Brooklyn, while driving a vehicle recently purchased by his sister, § 87(2)(b) was pulled over by PO Ronald Chiriboga of the 79th Precinct (**Allegation A: Abuse of Authority: § 87(2)(g)**). Upon finding that the vehicle's temporary tag number could not be authenticated, PO Chiriboga proceeded to conduct a further investigation, and eventually frisked and searched (**Allegations B and C: Abuse of Authority: § 87(2)(g)**). Suspecting that the temporary tag was a forged instrument, PO Chiriboga went on to arrest § 87(2)(b) and removed him to the 79th Precinct Stationhouse, along with his seized vehicle (**Allegation D: Abuse of Authority: § 87(2)(g)**). PO Chiriboga allegedly strip-searched § 87(2)(b) before lodging him in a holding cell (**Allegation E: Abuse of Authority: § 87(2)(g)**). When he then conducted an inventory search of the impounded vehicle, PO Chiriboga discovered a long knife inside (**Allegation F: Abuse of Authority: § 87(2)(g)**). At some point thereafter, via queries on a stationhouse computer, PO Chiriboga managed to validate the temporary tag number, and eventually released the vehicle to § 87(2)(b) sister. However, because a knife was discovered during the inventory search of the vehicle, § 87(2)(b) was arrested and charged with Criminal Possession of a Weapon. (Board Review 06). Ultimately, the Kings County District Attorney's office declined to prosecute the offense, § 87(2)(b).

Body worn camera footage of the incident was obtained from the involved officers (Board Review 08-11) and the video summarized (Board Review 12).

Findings and Recommendations

Allegation (A) Abuse of Authority: At Park Avenue and Bedford Avenue in Brooklyn, Police Officer Ronald Chiriboga stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (B) Abuse of Authority: At Park Avenue and Bedford Avenue in Brooklyn, Police Officer Ronald Chiriboga frisked § 87(2)(b).

Allegation (C) Abuse of Authority: At Park Avenue and Bedford Avenue in Brooklyn, Police Officer Ronald Chiriboga searched § 87(2)(b).

Allegation (D) Abuse of Authority: At Park Avenue and Bedford Avenue in Brooklyn, Police Officer Ronald Chiriboga seized § 87(2)(b) vehicle.

The following primary facts are undisputed. On January 29, 2021, at approximately 8:43 PM, § 87(2)(b) was driving his sister's newly purchased Chevy Suburban with a Texas-issued temporary tag affixed to the inside of the rear window. At Park Avenue and Bedford Avenue, PO Chiriboga stopped § 87(2)(b) for driving with an improperly displayed tag. When PO Chiriboga tried to authenticate the temporary tag number via database queries on his departmental mobile phone, PO Chiriboga was unable to find a corresponding electronic record of the number (a 'positive match'). After additional queries, including those run by other officers responding to the scene, failed to yield any positive matches, PO Chiriboga arrested § 87(2)(b) for possession of a forged instrument. Subsequently, a computerized search at the stationhouse verified that the temporary tag number was in fact valid.

PO Chiriboga's BWC captured the incident in its entirety, and largely mirrored both his and § 87(2)(b) testimony. At 1:10 of PO Chiriboga's BWC (Board Review 09), it shows the vehicle

stop and the ensuing investigation into § 87(2)(b) rear window temporary tag. There is a discrepancy on the BWC timestamp which the investigation determined to be ahead by four hours.

PO Chiriboga advised § 87(2)(b) that he was stopped because his tag is improperly displayed and illegible from outside. Upon obtaining § 87(2)(b) driver's license and registration, PO Chiriboga inspects the tag on the rear window, and reads the number out to his partner, PO Neysa Korycki, who appears to query her cell phone. PO Chiriboga appears to input the same into his phone as well. At 07:35 in the video, PO Chiriboga calls an unidentifiable individual on his cell phone and asks how he can verify if a Texas temporary tag is "real or fake..." At 13:12, PO Chiriboga confers with a second unit arriving on the scene, stating that the temporary tag "doesn't come up" when queried for. At 13:48 into the footage, PO Chiriboga advises the responding unit to stay on scene, stating, "We might have an under." (Board Review 09)

At 14:00 in PO Chiriboga's BWC (Board Review 09), PO Chiriboga returns to § 87(2)(b) and states, "I'm going to ask you – is this temp tag real or fake?" § 87(2)(b) says it is real. PO Chiriboga then asks if § 87(2)(b) can remove the tag for the officers' closer inspection. § 87(2)(b) asks if he can step out to gain access to the rear window and is permitted to do so. At 14:15, as § 87(2)(b) steps out, PO Chiriboga states, "Hold on – let me make sure you have no weapons on you." PO Chiriboga then begins to pat § 87(2)(b) lower torso, waist and pants pockets. When asked why he is being "searched," PO Chiriboga states: "You were caught with fake tags in the past...in the past you were arrested for having a large knife... now I don't know you, so I got to make sure you don't have a weapon." Between 15:34 and 16:40, as § 87(2)(b) removes and hands over the tag, PO Chiriboga orders him to remain at the rear so he can continue his investigation, stating, "You are being detained...you are not free to leave at moment."

Between 24:00 and 28:00 minutes (Board Review 09), with the assistance of PO Moses Lebron, the officers' queries of the tag number did not yield any results. At 22:42, while the officers' cell phone screens never come into view, PO Lebron tells PO Chiriboga that his cell phone queries only returned a message stating, "Request Submitted." PO Chiriboga and PO Lebron agree that the query should be returning a positive or negative match on record, with PO Chiriboga stating, "It's gotta be fake." At 26:48, PO Lebron is on the phone with an unidentified individual and PO Lebron advises PO Chiriboga that "nothing's coming up." PO Lebron stated, "She ran it on DAS and Z-Finest." (26:55) At 27:55 minutes in the video, § 87(2)(b) is handcuffed and arrested for possessing a forged instrument.

As stated before, § 87(2)(b) and PO Chiriboga's accounts of the stop and arrest were almost entirely consistent with the BWC footage of the incident (Board Review 01, 02). Regarding his decision to arrest § 87(2)(b) PO Chiriboga stated that when § 87(2)(b) stepped out of his vehicle, he frisked and searched him as incident to an ongoing arrest, and instructed him to remain at the rear of the vehicle with the other officers. PO Chiriboga stated that he suspected the plate was fraudulent when he ran it several times and "it didn't come back to anything." PO Chiriboga stated that § 87(2)(b) was not free to leave, and he was under arrest unless his investigation turned out that everything with the car was legitimate. PO Chiriboga stated that he decided to handcuff § 87(2)(b) on the charge of possessing a forged instrument only after he exhausted additional field inquiries. After the officers brought § 87(2)(b) to the stationhouse, PO Chiriboga ran the temporary tags on the stationhouse computer and it indicated that the true owner of the vehicle was § 87(2)(b) sister. PO Chiriboga later called § 87(2)(b) sister and she affirmed that it was her vehicle.

The warrant audit produced to the CCRB only showed some queries related to § 87(2)(b) conducted first at 8:46 PM and then later after 11:00 PM, but these results likely did not include the

various inputs of the temporary tag number (Board Review 05). The police documentation made available did not disclose exactly when the tag number was ultimately authenticated at the stationhouse. Because § 87(2)(b) never provided the CCRB with a signed unsealing order as requested, all other pertinent paperwork, including arrest-related and decline-to-prosecute forms, were not produced (Board Review 07).

N.Y. Vehicle Traffic Law § 402-1 states: “Number plates shall be kept clean and in a condition so as to be easily readable and shall not be covered by glass or any plastic material, and shall not be knowingly covered or coated with any artificial or synthetic material or substance that conceals or obscures...and the view of such number plates shall not be obstructed by any part of the vehicle or by anything carried thereon...” (Board Review 13)

Under N.Y. Penal Law § 170.10, criminal possession of a forged instrument can be a class D felony (Board Review 14).

An officer is permitted to stop an individual if they have reasonable suspicion of that individual’s criminality. An officer also has the authority to “frisk a detained individual, if they believe “[they are] in danger of physical injury by virtue of the detainee being armed.” (Board Review 15: People v De Bour, 40 N.Y.2d 210 [1976]).

Under the “search incident to arrest doctrine,” a search “must be incident to an actual arrest, not just to probable cause that might have led to an arrest, but did not.” The doctrine is applicable only when there is “proof that, at the time of the search, an arrest has already occurred or is about to occur.” (Board Review 16: People v Reid, 24 NY3d 615 [2014]).

NYPD Patrol Guide Procedure 218-19 states that a vehicle can be seized following an arrest if the true owner cannot be determined (Board Review 17).

§ 87(2)(g)

The BWC footage shows that PO Chiriboga was unable to authenticate the temporary tag number before returning to the stationhouse; this justified his arrest and the seizure of his vehicle. However, the investigation concluded that the sequence of PO Chiriboga’s statements and actions, from 8:56 PM to 9:10 PM, belied his chief assertion – that he considered § 87(2)(b) to be under arrest at the time he exited his vehicle. On the contrary, the video evidence shows that PO Chiriboga remained uncertain about the status of the temporary tag at that point; this was precisely why § 87(2)(b) was stepping out – to retrieve the paper tag for PO Chiriboga’s closer inspection.

PO Chiriboga immediately conducted a full pat-down frisk of § 87(2)(b) after he stepped out of the vehicle. As noted above, § 87(2)(b) was not considered to be under arrest at this point; thus, the frisk and subsequent search of § 87(2)(b) pockets were not incident or even contemporaneous to an actual arrest already in motion. Furthermore, PO Chiriboga had no articulable reason to fear that § 87(2)(b) posed a threat to his safety: the video shows that § 87(2)(b) was compliant and non-combative throughout the encounter. Moreover, the investigation determined by a preponderance of the evidence that there was no reason to believe that § 87(2)(b) was armed. PO Chiriboga’s knowledge of § 87(2)(b) arrest history had no factual bearing on whether he was an imminent threat that night or that he was armed during the incident.

After frisking and searching § 87(2)(b) PO Chiriboga specifically told § 87(2)(b) that he was being detained (not arrested) and continued investigating the temporary tag. Only after approximately 14 more minutes of investigation did PO Chiriboga decide to arrest § 87(2)(b) § 87(2)(g)

Based on BWC footage corroborating PO Mitchell's account that the officers were unable to authenticate the temporary tags, § 87(2)(g)

Furthermore, PO Mitchell continued his investigation in finding the true owner at the stationhouse and confirmed that § 87(2)(b) sister was the true owner. § 87(2)(g)

Allegation (E) Abuse of Authority: At the 79th Precinct Stationhouse in Brooklyn, Police Officer Ronald Chiriboga strip-searched § 87(2)(b).

It is undisputed that PO Chiriboga, between frisking § 87(2)(b) at the desk and lodging him in a cell, PO Chiriboga escorted him into a bathroom in the holding area and asked him to lower his pants. It is further undisputed that PO Chiriboga did so to inspect a second article of clothing § 87(2)(b) was wearing beneath his pants—a long-legged thermal layer, under which he had on boxer briefs.

§ 87(2)(b) stated that when he lowered his pants, PO Chiriboga placed his hands under the thermal layer and patted his groin, specifically his testicles, without going under the thermal layer or making contact with his skin (Board Review 01).

PO Chiriboga did not recall anything regarding the manner in which he performed the stationhouse search, beyond stating it that it was entirely per procedure (Board Review 02). PO Chiriboga stated that he did not recall any reason to examine his underwear and did not recall if he was wearing a secondary layer beneath his pants.

Upon arriving at the stationhouse, PO Chiriboga and PO Korycki removed their BWCs and placed them atop the front desk while they remained activated. But after processing § 87(2)(b) at the desk, PO Korycki took PO Chiriboga's BWC and PO Chiriboga took PO Korycki's BWC and they both wore the other's BWC for the duration of the incident. Beginning at 49:00 of PO Korycki's BWC (or rather, the BWC worn by PO Chiriboga) the footage shows PO Chiriboga briefly patting down the full length of § 87(2)(b) body. At 50:15 minutes, PO Chiriboga asks § 87(2)(b) to lower his pants so that he can make sure that his "long johns don't have pockets." § 87(2)(b) lowers his pants momentarily and pulls them back up, without any discernible physical contact from PO Chiriboga (Board Review 11).

Per NYPD Patrol Guide Procedure 208-05: "A search at a police facility, which is not the same as a "strip search," includes the removal of outer garments (e.g., overcoats, jackets, sweaters, vests, hats, wigs, ties, belts, shoelaces, drawstrings, shoes, socks, handbags, wallets, etc.)." A strip search is any search in which an individual's undergarments and/or private areas are exposed or in which an individual's clothes is removed, lifted up, or pulled down to expose undergarments or private areas. A strip search may only be conducted when the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods (Board Review 18).

Although § 87(2)(b) stated that he wore boxers under his thermal “long underwear,” BWC footage does not show whether this was immediately obvious to PO Chiriboga and because PO Chiriboga intentionally exposed an undergarment -- a private article most commonly referred to as “long underwear” -- to plain view, § 87(2)(g)

§ 87(2)(g) he had already been frisked and searched on at least three separate occasions, and at no point did PO Chiriboga appear to have detected anything suspicious to warrant an even greater degree of intrusion. Moreover, PO Chiriboga stated that he did not recall any reason to examine § 87(2)(b) underwear. § 87(2)(g)

Allegation (F) Abuse of Authority: At the 79th Precinct Stationhouse in Brooklyn, Police Officer Ronald Chiriboga searched the vehicle in which § 87(2)(b) was an occupant.

The BWC footage shows that PO Chiriboga conducted a search of the vehicle’s interior soon after § 87(2)(b) was lodged.

PO Chiriboga’s BWC footage begins at 9:39 PM and shows PO Chiriboga and PO Korycki walking to § 87(2)(b) SUV, which is parked within the premises of the stationhouse lot. The officers first open the trunk and shift through its contents, going through heaps of boxes and plastic bags with miscellaneous papers and materials strewn throughout the trunk and the cabin. They do not appear to engage in any close inspection of these items. The officers then enter and search the front and rear of the interior. At 04:35 minutes, PO Chiriboga’s BWC becomes obstructed; however, he is heard stating he found “a large knife right in that door.” (Board Review 10).

PO Chiriboga stated that he conducted the inventory search because it was required under departmental protocols, irrespective of the fact that the vehicle was ultimately surrendered to the sister after the temporary tag was validated. PO Chiriboga stated that although the object of the inventory search was not to recover evidence, but to account for the condition and contents of the vehicle, it just so happened that he found a hunting style knife with a seven-inch blade lying in an open compartment on the driver side door. Because it was illegal under state law to possess a blade of this length, PO Chiriboga had no choice but to confiscate it and charge § 87(2)(b) with criminal possession of a weapon. PO Chiriboga did not believe that he prepared any formal documentation of the inventory search, besides vouchering the recovered knife as arrest evidence and invoicing the belongings found on § 87(2)(b) person.

Besides the above-referenced voucher for the knife and the belongings recovered from § 87(2)(b) the NYPD produced no records reflecting that the vehicle was vouchered, or that the inventory search was documented in another format (Board Review 06).

Per NYPD Patrol Guide 218-13, officers are required to conduct a thorough search of the interior of any vehicle “comes into the custody of [the] Department. Property of little value that is left inside the vehicle (e.g., old clothes, cassette tapes, and vehicle parts, etc.) should within reason, be listed in the officer’s activity log and cross referenced to the invoice number covering any valuables removed (Board Review 19).

Given that the inventory searches should be designed to produce a “usable inventory” the “hallmark of an inventory search” is “a meaningful inventory list.” (Board Review 20: People v Johnson, 1 NY3d 252 [2003])

§ 87(2)(g)

PO Chiriboga thus failed to provide sufficient account and a "usable record" of the inventoried items which were not vouchered –including the vehicle itself § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party.
- PO Chiriboga has been a member of service for eight and has been a subject in seven CCRB complaints and 18 allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- The results of a Notice of Claim request, submitted to the Office of the Comptroller on May 4, 2022, will be added to the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: _____ 16 _____

Investigator:	<u>/sprakash</u>	<u>Inv. Santosh Prakash</u>	<u>05/27/22</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Patrick Yu</u>	<u>IM Patrick Yu</u>	<u>05/27/2022</u>
	Signature	Print Title & Name	Date